

DIA POSITION ON PROPOSED ANNEX B
TO DCID 1/14 - SCI APPEAL PROCEDURES

BACKGROUND PAPER

I. SUBJECT: SCI Denials Working Group Final Report of Appeals Procedures.

II. MAJOR POINTS:

A. By memorandum of 22 Dec 78, the SECOM Chairman requested committee principals to submit the proposed Annex B, DCID 1/14 ("Appeals Procedures") to their respective legal counsels for review. The annex is to be discussed, and possibly voted upon at the 24 Jan 79 meeting.

B. On 9 Jan 79, GC responded to an RSS request for legal advice concerning this matter. The following points synopsise GC's views:

1. The lack of formalized appeals procedures in the SCI area would prove difficult to defend in litigative situations.

2. Differentiation between denial of a clearance and denial of SCI access is not considered valid.

3. In view of the fact that the DoD has established a formalized system of due process to cover denial of collateral clearances (DoD Directive 5210.7), logic would appear to dictate that similar procedures should exist for adverse SCI actions.

4. Any administrative due process procedure must contain six basic elements:

- a. Notice.
- b. Right to present evidence.
- c. Right to rebut adverse evidence.
- d. Subject has a right to be represented by counsel.
- e. The decision must be based solely upon evidence introduced at a hearing.
- f. Subject must be provided a copy of the record.

5. The proposed Annex B to DCID 1/14 could serve as a basis for implementation of due process procedures by the respective Intelligence Community agencies if paragraph 5. were changed to read: "Requirements:

DIA review completed.

Each SIO will ensure the establishment of an appellate denial procedure which complies with the requirements imposed by law relating to the concepts of fundamental fairness and administrative due process."

6. The recommended substitute language for paragraph 5 is general in nature, more in keeping with the context of the basic DCID 1/14. Such language would thus enable each member agency to develop, with the advice and consent of his General Counsel, SCI denial appeals procedures which conform to the unique requirements of his particular agency.

III. RECOMMENDATION: That the Security Committee adopt the substitute language contained in paragraph 5. above for paragraph 5 of proposed Annex B to DCID 1/14.

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